

FILED IN CHAMBERS  
U.S.D.C. - Rome  
JUL 28 2013

JAMES N. HATTEN, Clerk  
*[Signature]*  
Deputy Clerk

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION  
NO. 4:12-CR-20-RLV

GEOFFERY WILLIAM HINE,

Defendant.

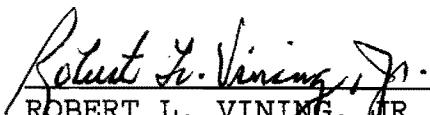
O R D E R

After carefully considering the report and recommendation of the magistrate judge dated July 1, 2013, the court receives it with approval and adopts it as the opinion and order of this court.

In reaching this conclusion, the court considered the defendant's July 15, 2013 objections. In his July 15, 2013 objections, the defendant argued that the magistrate judge erred by presuming a waiver of his right to silence from a silent record in violation of the Supreme Court's decision in Johnson v. Zebrst, 304 U.S. 458 (1938). However, the court concludes that the defendant's objections directly conflict with the Supreme Court precedent set forth recently by Berghuis v. Thompkins, 130 S. Ct. 2250 (2010). In Berghuis, the Supreme Court held that a suspect must affirmatively invoke his or her right to remain silent. While the dissenters in Berghuis argued that majority's interpretation of the right to remain silent created a absurd system wherein a person

invoking his or her right to remain silent would have to speak to do so, this is the law set forth by the majority in Berghuis which this court is compelled to follow. In this case and as correctly set forth by the magistrate judge, the facts indicate that the defendant waived his right to remain silent by not affirmatively invoking his right to remain silent as the magistrate judge correctly concluded in his report and recommendation. Therefore, the court concludes that the magistrate judge did not commit any legal or factual error in his well-reasoned report and recommendation and REJECTS the plaintiff's July 15, 2013 objections.

SO ORDERED, this 28<sup>th</sup> day of July, 2013.

  
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ROBERT L. VINING, JR.  
Senior United States District Judge